



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/610,491	06/30/2003	Justin P. Nadeau	78658/1	5391
25223	7590	02/26/2004	EXAMINER	
WHITEFORD, TAYLOR & PRESTON, LLP ATTN: GREGORY M STONE SEVEN SAINT PAUL STREET BALTIMORE, MD 21202-1626			PIHULIC, DANIEL T	
		ART UNIT		PAPER NUMBER
				3662

DATE MAILED: 02/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/610,491	NADEAU, JUSTIN P. <i>JP</i>
	Examiner	Art Unit
	Daniel Pihulic	3662

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-8, 10-15 and 18-21 is/are rejected.
- 7) Claim(s) 9, 16 and 17 is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 30 June 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: ____.

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

2. The drawing is objected to because the boxes should have descriptive labels in addition to the reference numerals. Correction is required.

3. The abstract of the disclosure is objected to because the legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

Correction is required. See MPEP § 608.01(b).

4. Claims 6, 11 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 recites the limitation "the group" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 11 recites the limitation "the means for wearing" in line 2. There is insufficient antecedent basis for this limitation in the claim. Applicant probably intended claim 11 to depend from claim 10 and not claim 9.

Claim 12 recites the limitation "the group" in line 2. There is insufficient antecedent basis for this limitation in the claim.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 5-8, 10, 12, 13, 18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holt (5177891) in combination with Holt (5883858) and Wynne. The Holt (5177891) reference discloses the utilization of recorded animal sounds to control an animal's behavior comprising a circuit board (120); control circuitry (306); a sound generator (302); a speaker (303); a battery (124); and a waterproof container (101 & 103) as recited in the claims. The difference between the Holt (5177891) reference and the claims is that the claims recite the utilization of a switch and sounds to repel a predator. The Holt (5883858) reference teaches that it was well known in the art to utilize the aforementioned patent's principles to repel sharks or other predators. The Wynne reference teaches that it was well known in the art to utilize a water

activated switch to activate a shark repelling device. It would have been obvious to modify the Holt (5177891) reference to be utilized to repel sharks or other predators as motivated by the Holt (5883858) reference to enable the Holt (5177891) system to protect swimmers. It would have also been obvious to modify the Holt (5177891) reference to utilize a water activated switch as motivated by the Wynne reference to enable the Holt (5177891) system to conserve energy when the swimmer is not in the water. The Wynne reference teaches that it was well known in the art to attach a shark repelling device to a swimmer's wrist (see column 3, line 37).

7. Claims 14, 15, 19 and 20 are rejected under 35 U.S.C. § 103 as being unpatentable over Holt (5177891) in combination with Holt (5883858) and Wynne, as applied to claims 1 and 18 above, and further in combination with Oschman et al. The claims additionally recite the utilization of sound waves between 120 and 190 decibels. The Oschman et al. reference teaches that it was well known in the art to utilize sound waves of 150 decibels in a marine animals behavior control device. It would have been obvious to modify the previous combination of references to utilize sound waves of 150 decibels as motivated by the Oschman et al. reference to enable the system to influence marine animals.

8. Claims 3 and 4 are rejected under 35 U.S.C. § 103 as being unpatentable over Holt (5177891) in combination with Holt (5883858) and Wynne as applied to claim 2 above, and further in combination with Davies. The claims additionally recite the utilization of whale sounds. The Davies reference teaches that it was well known in the

Art Unit: 3662

art to utilize whale sounds. It would have been obvious to modify the previous combination of references to utilize whale sounds as motivated by the Davies reference to enable the system to repel sharks.

9. Claims 9, 16 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Pihulic whose telephone number is 703-306-4168. The examiner can normally be reached on Monday through Thursday from 7 a.m. to 5 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Tarcza, can be reached on 703-306-4171.

The fax phone numbers for the organization where this application or proceeding is assigned are:

703-872-9306 for official responses, and

703-746-3847 for unofficial communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.


Daniel Pihulic
Primary Examiner
Art Unit 3662

BEST AVAILABLE COPY